

ANGELA SACCHI  
ROBERT SACCHI

**Real Property Located:**  
203 NORTH GRAMERCY PLACE  
LOS ANGELES, CA 90004

**AFFIDAVIT OF  
WILLIAM McCaffrey**

I William McCaffrey, declare as follows:

1. I am over the age of 18 years and qualified to make this affidavit. I am a resident of the State of Arizona and make this Affidavit based on my own personal knowledge. I have no direct or indirect interest in the outcome of the case at bar for which I am offering my observations, analysis, opinions and testimony.

2. My experience in the Banking industry encompasses over 30 years employment for federally insured institutions. I was formerly Business Development Manger with Indy Mac Bank FSB, for over ten years and am currently employed as a Consultant for Housing Mortgage Consultants Inc. of which I own. I have personal knowledge and experience to render opinions in the topic areas related the securitization of mortgage loans, derivative securities, the securities industry, real property law, Uniform Commercial Code practices, predatory lending practices, Truth in Lending Act requirements, loan origination and underwriting, accounting in the context of securitization and pooling and servicing of securitized loans, assignment and assumption of securitized loans, creation of trusts under deeds of trust, pooling and agreements, and issuance of asset backed securities and specifically mortgage-backed securities by special purpose vehicles in which an entity is named as trustee for holders of certificates of mortgage backed securities, the economics of securitized residential mortgages during the period of 2001-2008, appraisal fraud, and its effect on APR disclosure, usury, exceeding the legal limit for interest charged, foreclosure of securitized, non-securitized residential mortgages.

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1 3. I have been qualified to testify in Maricopa County Superior Court, and US District  
2 Court. In the past few years, I have served as Expert Witness in numerous civil cases.  
3 I have testified at trial in Federal and Superior Court including Nevada and Arizona.  
4 Superior Court Cases include *Marshall and Isley Bank v. Izzo, Slikker v. Kondaur,*  
5 *Brokalakis v. National City Mortgage, and Wells Fargo Bank v. Dutson.* Superior Court  
6 Judges' Ronan, Garcia, and Budoff, as well as Commissioners' Davis, Ellis, and  
7 Hamner have affirmed my expert testimony. Further, I've offered expert testimony  
8 in the US District Court of Nevada under Judge Riegle, in *Charov v. Perry.*

9 4. I have reviewed thousands of Mortgage Assignments and I am familiar with such  
10 documents and how they are properly prepared and signed.  
11 I have reviewed the initial pleadings and loan documents provided as to the  
12 property located at 4203 NORTH GRAMERCY PLACE, LOS ANGELES, CA, 90004  
13 which is the subject of this lawsuit, and have conducted a preliminary audit of the  
14 documents. Finding the following:

15 5. AMERICAN HOME MORTGAGE ASSETS TRUST 2007-5 created (and closed) in  
16 2007 is very unlikely to have acquired this non-performing loan when the loan was  
17 already in default. From my knowledge and experience with mortgage-backed  
18 securitized trusts, such acquisition of a non-performing loan is prohibited,  
19 particularly after the closing date of the Trust. The present case appears to be  
20 another example of a trust failing to produce the Assignment that should have been  
21 created and obtained in 2007. The Assignment Date is almost certainly incorrect.

22 6. In formulating my opinion, I have relied upon applicable New York law because  
23 Section 2.04 of the trust agreement, which is called a Pooling and Servicing  
24 Agreement (PSA) and under which WELLS FARGO NATIONAL ASSOCIATION  
25 purports to be Trustee, provides in applicable part that the trust agreement "shall be  
26 governed by and controlled in accordance with the laws of the State of New York..."  
27  
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1 7. I n formulating my opinion, I have been guided to the following trust and property  
2 law rules under New York law:

3 A. Unless an asset is transferred into a lifetime trust, the asset does not  
4 become trust property (NY Estates, Powers and Trust Law §7-1.18).

5 B. The assignment of a mortgage without transfer of the underlying  
6 promissory note is a nullity.

7 C. A trustee's act that is contrary to the trust agreement is void (NY Estates,  
8 Powers and Trusts Law § 7-2.4).

9 8. I have reviewed the promissory note, the subject mortgage and the mortgage  
10 assignment, and the documents, which purportedly created the Trust and named  
11 WELLS FARGO NATIONAL ASSOCIATION as Trustee.

12  
13 9. My opinion is based on facts contained these documents. These facts are set  
14 fourth below:

15 A. Section 2.04 of the PSA defines the closing date as JUNE 1, 2007.

16 B. There is no evidence that the promissory note was actually conveyed to  
17 the Trust by JUNE 1, 2007.

18 C. Pursuant to the PSA, the Trustee was prohibited after JUNE 1, 2007 from  
19 accepting "any contributions of assets to any REMIC unless...the Trustee shall have  
20 received an Opinion of Counsel... to the effect that the inclusion of such assets in any  
21 REMIC will not cause [adverse tax consequences.]

22 D. According to 860(6)(a)(3) of the PSA, the Trustee is barred from accepting  
23 any contribution of assets after executing the Certificates unless "an Opinion of  
24 Counsel is to the effect such contributions" would not cause adverse tax  
25 consequences. Section 2.05(b) of the PSA effectively required that the Certificates be  
26 issued on JUNE 1, 2007.

27 E. The SACCHI'S Mortgage loan was in default and therefore could not have  
28 qualified as a "qualified mortgage loan" for REMIC purposes.

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1 F. The promissory note, with a blank endorsement, may have been delivered  
2 to the Trustee in the 2007 but there are no other endorsements or alonges to the  
3 promissory note.

4 G. Whenever the promissory note was delivered to the Trustee, the Mortgage  
5 loan was in default and therefore could not have qualified as a "qualified mortgage  
6 loan" for REMIC purposes.

7 10. Based upon these assumed facts, I am of the opinion that the RESIDENTIAL  
8 CREDIT SOLUTIONS never has been, the owner of promissory note secured by a  
9 mortgage upon which they have claimed ownership. My opinion is based on the  
10 following:

11 Because the promissory note was not actually transferred to the Trustee by  
12 the JUNE 1, 2007 closing Date under the PSA, the promissory note did not then  
13 become an asset of the Trust.

14 11. Mortgage assignments for Trusts cannot be produced and Assignments from  
15 mortgage servicing companies such as LENDER PROCESSING SERVICES (LPS) are  
16 hired to recreate the absent assignments. LENDER PROCESSING SERVICES (LPS)  
17 created these documents. In the vast majority of cases, the individuals signing these  
18 documents as a representative of the GRANTOR/ASSIGNOR are actually working for  
19 the GRANTEE/ASSIGNEE bank/trustee. These individuals fail to disclose that they  
20 are working on behalf of the GRANTEE.

21  
22 **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS:**

23 12. There is no valid authorization to conduct a sale from the lender or beneficiaries  
24 of the Mortgage Backed Security Certificate Holders; therefore any foreclosure  
25 action taken is invalid.

26 Mortgage Electronic Registration Services ("MERS") is NOT a real beneficiary, only  
27 an electronic registration service with no employees that are authorized to sign  
28 assignments.

1 The common practice in the industry for MERS notes was to intentionally destroy  
2 them after being scanned for ease of tracking rendering the Note VOID and the Deed  
3 of Trust a null.

4 MERS members regularly "recreate" or fabricate documents from scanned images to  
5 file with the Courts.

6 MERS members can register online and pay a nominal fee to get an official looking  
7 corporate resolution appointing anyone to be an officer of MERS.

8 The REAL PARTY IN INTEREST is not in possession of the genuine and original Note.

9 **ISSUING ENTITY:**

10 13. AMERICAN HOME MORTGAGE ASSETS TRUST 2007-5, a common law trust  
11 formed under the laws of the State of New York, will issue the certificates. The  
12 issuing entity, also referred to as the trust, will be formed pursuant to a pooling and  
13 servicing agreement among the seller, depositor, the servicer, the trust oversight  
14 manager and the trustee.

15 The certificates solely represent beneficial ownership interests in the trust fund  
16 created under the pooling and servicing agreement.

17 Not an interest in, or the obligation of, the depositor, the sponsor, the trustee,  
18 the trust oversight manager, or any other person.

19 **THE ORIGINATOR:**

20 14. Most of the mortgage loans were originated or acquired initially, either directly  
21 or through and affiliate by AMERICAN BROKERS CONDUIT.

22 **THE DEPOSITOR:**

23 15. On the closing date, AMERICAN HOME MORTGAGE ASSETSS, LLC. assigned all of  
24 its interest in the mortgage loans to the trustee for the benefit of certificate holders.  
25  
26  
27  
28

(1) Investors who purchased assets described in the  
of the loans were described with sufficient specificity as to at least express the  
intent to convey ownership of the obligation as evidenced by the promissory note  
and an interest in real property consisting of a security interest held by an entity  
that was described as the beneficiary of a Trust created by an instrument entitled  
Deed of Trust;

- (2) Insurers that paid some party on behalf of said investors;
- (3) Counterparties on credit default swaps;
- (4) Conveyances or constructive trusts arising by operation of law  
through cross collateralization and over-collateralization within the aggregate asset

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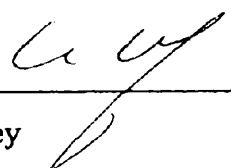
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1 security interest, or obligation has been extinguished or paid in whole or in part by  
2 co-obligors, insurers and/or federal bailout. The "election" of non-judicial process  
3 shifts the burden to the borrowers in the loans to allege facts that are solely within  
4 the knowledge of the lenders that are intentionally withheld to them.

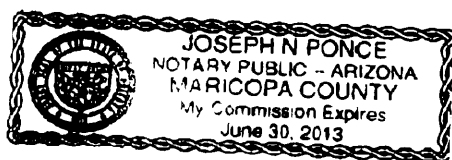
5 i. In the securitization of the loan, the rights of various named Trustees have  
6 been superseded by succeeding trustees ending with the Trustee for the holders of  
7 mortgage backed securities in the recorded documents in the present case, whose  
8 powers are limited to ONLY what the certificate holders authorize. Accordingly, the  
9 only potential party to a foreclosure wherein the allege financial injury and  
10 therefore a right to collect the obligation, enforce the note or enforce the security  
11 instrument is either a party who has actually lost money or stands to lose money, or  
12 an authorized representative who can show such authority and is answerable to the  
13 claims, affirmative defenses and counterclaims of the borrowers for such causes of  
14 action or defenses as might be applicable.

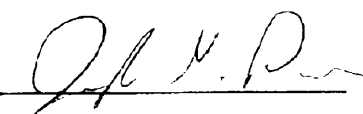
15 20. All factual testimony or statements made in this declaration are true and correct  
16 to the best of my knowledge and belief. All opinions stated herein are based upon a  
17 reasonable degree of probability or a high likelihood of probability. I have no direct  
18 or indirect interest in the outcome of the case for which I am offering my  
19 observations, analysis, opinions and testimony

20 FURTHER AFFIANT SAYETH NAUGHT.

21   
22 William McCaffrey

23  
24 SWORN TO AND SUBSCRIBED before me, the undersigned notary public, this 24<sup>th</sup> day  
25 of March 2011.



  
Notary Public

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